

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN DARYL TOEWS**, on March 24, 1999 at 3:07 P.M., in Room 402 Capitol.

ROLL CALL

Members Present:

Sen. Daryl Toews, Chairman (R)
Sen. Bill Glaser, Vice Chairman (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis (R)
Sen. John Hertel (R)
Sen. Mike Sprague (R)
Sen. Spook Stang (D)
Sen. Jack Wells (R)

Members Excused: Sen. Bob Keenan (R)
Sen. Debbie Shea (D)
Sen. Mignon Waterman (D)

Members Absent: None.

Staff Present: Eddy McClure, Legislative Branch
Janice Soft, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: SB 460 DPAA; HB 220 TABLED; HB 236 TABLED; HB 584 BCIAA; HB 528 BCI; HB 590 BCIAA; HB 103 TABLED

EXECUTIVE ACTION ON SB 460

Motion: SEN. ELLIS moved that SB 460 DO PASS.

Motion/Vote: SEN. ELLIS moved that AMENDMENTS SB046001.AEM EXHIBIT (eds66a01) DO PASS. Motion carried unanimously 11-0.

Discussion:

EXHIBIT (eds66a02) was distributed and used as the basis for the following discussion.

SEN. ALVIN ELLIS said the school election date coincided with the primary election date. He did not know how much money would be saved by school districts, although it could happen because of the savings from the shorter poll hours.

SEN. JOHN HERTEL contended the same judges could not be used for both the school and primary elections. Shirley Barrie, Ferguson County Superintendent of Schools, said usually the precinct boundaries were different from the school district boundaries; therefore, there would be two different ledgers and two different polling places.

SEN. BARRY "SPOOK" STANG suggested if the election was not until June, a month or so of construction season would be missed. He wondered if it was wise to move it that far forward, especially since it now was not necessary for it coincide with a regular election date (because of CI-75). SEN. BILL GLASER said he had never favored a June date because it did not fit with what schools needed to do. It was his opinion early May was the latest a school election could be held. Also, he, personally, would have to drive 25 miles one way if both the school and general elections were held the same day. He did not think the June date would warrant the economic savings, unless all the election laws were changed.

{Tape : 1; Side : A; Approx. Time Counter : 9.5}

SEN. ELLIS said he did not realize the boundaries of both voting precincts were not the same. Therefore, there would not be a savings, and the early May date would be better.

Motion/Vote: SEN. ELLIS moved that ELECTION DATE BE MOVED TO 1ST TUESDAY AFTER THE 1ST MONDAY IN MAY DO PASS. Motion carried unanimously 11-0.

SEN. ELLIS addressed the issue of one tax election, and suggested one of the biggest reasons people voted for CI-75 was their resentment against school districts running several elections to try to pass a mill levy. He said he was adding language which would allow for only one tax election, because other elections allowed only one-time voting. He maintained schools would be in

a better position to get their levies through the first time, because they would have to "put their best foot forward" in explaining the issue to the voters for the first and only election date.

Madalyn Quinlan, Office of Public Instruction (OPI), said if the levy failed, current law mandated the school go to the prior year budget or prior year budget per-student times the new student count. Therefore, if the enrollment was declining, voting would begin from a number lower than last year's budget. An amendment was made to HB 71, which said the prior year budget would be the starting point; however, current law was as she just explained. If the enrollment was increasing, the vote began at the prior year budget.

SEN. STANG asked if the single vote applied to bond elections and **SEN. ELLIS** said it did not, because if the first one failed, bond elections usually took place a year apart.

{Tape : 1; Side : A; Approx. Time Counter : 19.5}

SEN. ALVIN ELLIS addressed **EXHIBIT (eds66a03)** by explaining he had an amendment which required districts to subtract per-school entitlement. If they were over-maximum districts, they had to reduce their budget proportionately to their enrollment decrease. However, it did not work for two K-12 schools who were over the maximum, because elementary could gain and the high school could lose. He said when the maximum decreased, districts lost that much spending authority; however, if last year they spent \$100,000, for example, over maximum, they could continue spending \$100,000 over maximum. As nearly as he could tell, the amendment in **(EXHIBIT 3)** worked for any district, and put over-maximum districts in the same position as under-maximum districts, in regard to caps.

SEN. STANG said it "flew in the face" of what was told them during the implementation of HB 667 and HB 28, because they were told they could continue at that level. **SEN. DARYL TOEWS** said things were different in 1993, because enrollment was increasing. He maintained the amendment kept the spirit of what was promised them because they could keep spending over the caps what they had been spending. However, they had not anticipated declining enrollments.

SEN. BILL GLASER suggested the amendment would be better for the districts than what they would get in two years. It was his opinion in the long run, this was as good as it would get.

SEN. STANG stated the money in the over-maximum budget was local property taxes; therefore, schools which were spending over the maximum, were doing so with the support of their local tax payers. The legislature could make such a dramatic change in the decline of the tax base, the taxpayers might not be willing to support the over-maximum budgets. He suggested the problem might take care of itself. He expressed resistance to "tweaking" the formula. Also, when schools were equalized years ago, they equalized downwards, and this was what was happening here.

SEN. ELLIS the schools were not equalized downwards, because 37% of the school population was below the base budget, and they were forced to spend more money. Only 8% of the school's population was above the maximum budget, and there were not that many students currently above the maximum. It seemed unreasonable to allow a school which started out above the maximum, to have more freedom in relation to student enrollment than the schools which were below the maximum. He said about 107 school districts were at the maximum and about 112 at the base, yet there were about half again more students at the maximum than at the base. If any schools at the maximum were allowed more freedom in regard to voting, those schools would go through the caps and equalization would no longer be in effect. Therefore, the amendment was an item of fairness.

SEN. TOEWS said 18 of the 29 school districts were in his Senate area. He thought the amendment would keep the disparity from becoming so large the backlash would be very strong and severe.

Motion/Vote: **SEN. ELLIS** moved that **AMENDMENTS FOR OVER-MAX DISTRICTS DO PASS**. Motion carried 7-4, with **SEN. ELLINGSON, SEN. STANG, SEN. SHEA AND SEN. WATERMAN** VOTING NO.

{Tape : 1; Side : A; Approx. Time Counter : 29.5}

Motion: **SEN. ELLIS** moved that **AMENDMENTS ON BUDGET AUTHORITY BALLOT LANGUAGE EXHIBIT(eds66a04) DO PASS**.

SEN. ELLIS asked for more explanation of the amendment because he was not sure it was compatible with HB 71.

Kathy Fabiano, Office of Public Instruction (OPI), said the amendment in HB 71 changed the amount a district must vote, i.e. they would start from the prior year budget, as opposed to the prior year budget or prior year ANB budget. This amendment changed the ballot and the information disclosed on it. One of the disclosed numbers was the amount of the budget authority the district must submit to the voters.

SEN. ELLIS maintained if the start was from last year's General Fund budget, there would not always be a request for increase or increase for ANB entitlement. **Kathy Fabiano** said if the district had decreasing enrollment, but was increasing its budget from the prior year, which meant an election. She believed the section which was being amended did not speak to the amount of the budget authority the district had to submit to the voters. Another way of saying it was the district would levy a certain amount of mills in support of the prior year's General Fund budget. If the proposition was approved, the money requested in support of the General Fund budget would remain the same as the district's prior year budget and would increase the amount per student. She understood the dollar amount being discussed was property taxes.

SEN. ELLIS suggested one instance would be the same amount of ANB entitlement if there was an enrollment increase, and they were asking increased budget authority only to take advantage of that increased enrollment. **Ms. Fabiano** declared her struggle was where the language said "the money requested in support of the budget", because she was not sure whether the money referred to additional ANB entitlement from the state, which would neither have to be voted on, nor affect property taxes.

SEN. GLASER said he understood the language to mean an increase of a certain amount per student. He was of the opinion the voters would be very upset if that were true, because they would be told their taxes would increase in language they would not understand. He thought it would be better to say the school needed \$165,000, for example. YES or NO.

SEN. JACK WELLS suggested two of the statements gave the amount of money, and perhaps it could be added to the first statement.

SEN. TOEWS asked if it all went to ANB. **Kathy Fabiano** said the way the bill was drafted, the proposition would say how much increased budget authority the district was requesting, and disclose an amount per student. She wondered about the amount per student. Was it property tax increase, budget increase or what?

SEN. ELLIS he envisioned increased entitlement per student. However, if a district had a growing valuation, it could have a decrease in mills but an increase in dollars. **Kathy Fabiano** said it had to be decided whether the language would talk about mills or property taxes, which may or may not result in additional cost to the taxpayer. Budget authority, on the other hand, could be funded with either additional property taxes or state aid. **SEN. GLASER** insisted the most important thing was to regain credibility with the people, because they were going to have only

one chance. The proposal would have to be truthful, look good and be clearly stated. It was important to get people involved in supporting their schools.

SEN. STANG offered an amendment he had drawn up for another bill, but thought it would fit into **SB 460 EXHIBIT (eds66a05)**.

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Lance Melton, Montana School Boards Association (MSBA), said the amendment, supported by the education officials, tried to find a way to settle for the one levy election. He agreed the biggest issue was the complicated nature of putting the ballot before the people. He stressed schools did not get a lot of money, but a chance to ask taxpayers for it. The amendment said a school district would have to ask the taxpayer for every dime which come from the local taxpayer's pocket. The proposition on the second page of the amendment would not ask for an increase in the basic per ANB entitlements granted by the legislature, but would clearly state the amount levied the previous year, amount asked for this current year and whether or not the taxpayers would agree to the amount. He thought that language, going before the voters, was the most direct and simple.

SEN. ELLIS said all the money, between 80-100%, was local levies. When the districts expanded their budget, everyone, except those forced up by the base, would ask the voters to expand the budget authority for the ANB. This amendment said if the money came from the state, the voters did not have to pass on the increase. One drawback to the amendment, though, was they could not continue to hold the voters totally harmless in future years, because the per school entitlement would have to be increased. In other words, if the per school entitlement was not moved along with the per ANB entitlement, things would eventually get out of balance.

SEN. STANG said his amendment gave some ballot language people could understand and provided a compromise on the one-election idea. It assured the voters they could accept the money from the state, even though they might not be able to raise their own taxes.

{Tape : 1; Side : B; Approx. Time Counter : 7}

SEN. ELLIS suggested trustees could ask for a lesser increase, which would hold the taxpayers harmless, and take advantage of the ballot language. **Kathy Fabiano** affirmed, except in the base area of the budget because every district had to budget at least the base.

SEN. GLASER said if this amendment was adopted, all the money which was currently in SB 100, would go directly to the schools without a vote of the people. If the money in the second year was at 80%, there would not be a local vote. The schools would absorb it and the voter would determine the school funding or tax relief would go away.

Cliff Roessner, Helena Schools, used **EXHIBIT(eds66a06)** to explain what would happen to the Helena Schools because of SB 100. He ended by saying it was apparent how complicated it was to explain this to the average taxpayer.

SEN. STANG offered it did not seem right to vote the decrease in order to get the budget authority. It was very confusing to the taxpayer to see there was a decrease in taxes but an increase in budget authority. It seemed that voting on a tax increase gave a true picture.

{Tape : 1; Side : B; Approx. Time Counter : 13.2}

Lance Melton affirmed **SEN. STANG'S** explanation, but added that according to **(EXHIBIT 6)**, since both the under-base and over-base was a local property tax levy, at the high school level, the district would not be in a position to ask the taxpayer for anything. In the elementary district, the voters would be asked for \$104,000.

Substitute Motion/Vote: **SEN. STANG** made a substitute motion that **CONCEPTUAL AMENDMENT FROM (EXHIBIT 5) DO PASS**. Substitute motion carried 9-2, with **SEN. GLASER** and **SEN. WELLS VOTING NO**.

Vote: Motion SB 460 AS AMENDED DO PASS carried 7-4 on Roll Call Vote #1.

EXECUTIVE ACTION ON HB 220

Motion/Vote: **SEN. SPRAGUE** moved that HB 220 BE TABLED. Motion carried unanimously 11-0.

{Tape : 1; Side : B; Approx. Time Counter : 21.7}

EXECUTIVE ACTION ON HB 236

Motion: **SEN. HERTEL** moved that HB 236 BE CONCURRED IN.

Discussion:

SEN. BARRY "SPOOK" STANG asked what information had been found regarding the "little pockets". **SEN. ALVIN ELLIS** said he called the Belgrade school district and found current law precluded taking a "pocket" from the middle of the school district. Bozeman had impact fees and was supposed to reimburse local governments for the impact of people moving into Gallatin County. Belgrade did not have impact fees; therefore, it was economically attractive to build across the border in the Belgrade school district and then petition, as a single taxpayer, to move the property into the Bozeman district. The Bozeman school district did not accept the student without the property following him or her. He maintained it was hypocritical of Bozeman to allow this, because they were adding the impact fees to reimburse the governments and then accepting the property without the impact fees. He suggested drafting an amendment to deal with impact fees only, i.e. if the taxpayer bought and built after the initiation of the impact fee, he or she had to address the impact fees in the district into which the move would take place.

SEN. TOEWS contended impact fees were not a school issue.

SEN. STANG asked what the current procedure was if the property was to be transferred. **Jill Richards, Gallatin County Superintendent of Schools**, said they had to go to the County Superintendent and fulfill certain qualifications, i.e. be on the edge of the boundary. She would ensure they met the requirements and the voters had to sign the petition, etc. It was her experience, most of the requests came from single families, and the reason usually centered on children's issues. None had been because of taxes. She wanted to inform the Committee land in the Belgrade district had been transferred out into other districts, besides Bozeman. Those transfers, however, had been about one acre at a time, with a taxable valuation of \$500-\$1,000.

Substitute Motion/Vote: **SEN. STANG** made a substitute motion that **HB 236 BE TABLED**. Substitute motion carried unanimously 11-0.

{Tape : 1; Side : B; Approx. Time Counter : 31.9}

EXECUTIVE ACTION ON HB 584

Motion: **SEN. STANG** moved that **HB 584 BE CONCURRED IN**.

Motion/Vote: SEN. STANG moved that AMENDMENT HB058401.AEM EXHIBIT (eds66a07) BE CONCURRED IN. Motion carried unanimously 11-0.

Motion/Vote: SEN. STANG moved that HB 584 BE CONCURRED IN AS AMENDED. Motion carried unanimously 11-0. SEN. SHEA will carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 528

Discussion:

SEN. DARYL TOEWS said he had checked both old language and the Constitution, and he did not find where it said every Montana citizen should be afforded the opportunity to be educated in a culturally responsive manner. Eddy McClure said it was a statement of intent by the legislature. SEN. ALVIN ELLIS contended it would be codified as state statute.

Eddy McClure said Article X, Section 1(2) was placed in the education article, and addressed educational opportunity guaranteed to each person in Montana. Section 1(3) dealt with education funding and the state's responsibility to fund its fair share.

SEN. ALVIN ELLIS asked if a school district could be sued if it was not presenting education in this area. Ms. McClure said it was a "may" and it was up to local control to deal with it.

SEN. TOEWS suggested it did not talk about students, but about every Montana citizen. He said if it was "business as usual", the bill was unnecessary. It seemed the bill was trying to expand something, and he was not sure what it was. Eddy McClure said the Constitution used "citizen" or "person", and not "student."

{Tape : 2; Side : A; Approx. Time Counter : 0}

SEN. ALVIN ELLIS believed schools should teach Montana History, and include both past and present Indian culture. However, he did not see the "mays" in the bill, as alluded to earlier. Eddy McClure read from 20-4-212 in the Constitution, which said it was the intent.

SEN. JACK WELLS said he agreed; however, the bill said every citizen was to be afforded the opportunity to be educated in a culturally responsive manner. Also, Section 3, "Qualification in

Indian Studies", presumed Indian studies were already in place. It sounded like every school and every school district would have to establish a very specific course of study. **Eddy McClure** said NEW SECTION, Section 5, was repealer law because Indian studies were now buried in teacher education. The Statement of Intent was moved to the front of the bill and would be codified at the beginning of Title 20. Section 3 was the old version of 20-4-213, which read "Any Board of Trustees may....." The old law said, "Any Board of Trustees for elementary public school located on or near the vicinity of Indian reservations." Now it said, "The Board of Trustees for any school district may require all of its certified personnel.....", and there it picked up with existing law. The definition of American Indian studies was the same as existing law, but it was moved. She went on to say the requirement must be a local district requirement, which meant the state of Montana could not tell a local district to do this. If, however, the district required this of its personnel, it had to be done by adopting a policy, locally. The local boards could mandate it for their certified personnel and encourage it for their classified employees. This section had been moved and codified in a different place. Section 2(1) listed the different educational entities and encouraged them to work together in concert.

SEN. MIKE SPRAGUE asked about Section 4, "may" aspect, and **Ms. McClure** said that amendment was added in the House, and they wanted to know who was doing it.

SEN. BARRY "SPOOK" STANG said he thought this bill was good because it exposed every Montanan to the Native American heritage and way of life. That was helpful in understanding the "why" and "how" of the actions of Native Americans. He reiterated **HB 528** was a positive step in understanding they were our neighbors, and this understanding could take place in the minds of young children who as yet did not have preconceived notions.

{Tape : 2; Side : A; Approx. Time Counter : 8.7}

SEN. JOHN HERTEL said he was having a problem in seeing how these things would be implemented. He wondered from where the information would come.

SEN. WELLS said **HB 528** had no fiscal impact, so he wondered if present curricula would suffer, if the bill was implemented. He commented up to this point, the requirements of the Constitution had not been enforced. He saw the bill as imposing an administrative mandate.

SEN. SPRAGUE said he would support the bill because he felt the Native Americans had a pent-up frustration in trying to express themselves. He stated something should be tried because he did not like the attitude of the young people on the reservations. It seemed there was a cultural gap in the educational process. He was willing to give the concept a try.

Motion/Vote: **SEN. STANG** moved that **HB 528 BE CONCURRED IN.**

Motion carried 6-5 on Roll Call Vote #2. SEN. ECK will carry the bill on the Senate Floor.

{Tape : 2; Side : A; Approx. Time Counter : 18.1}

EXECUTIVE ACTION ON HB 590

Discussion:

Lance Melton explained Amendments HB059001.aem **EXHIBIT(eds66a08)** as "fingerprints were out and name-based background checks were in." He understood the FBI had the authority to share multi-state information, based on a name; however, currently, they were not willing to do it. It was his intent to write letters to Montana's congressmen, instructing them to contact the FBI. The congressmen were to strongly suggest the FBI should not require fingerprints, but should put forth the extra effort required for the name-based background check.

SEN. ELLIS suggested if the fingerprinting portion were removed from **HB 590**, it would become less than a resolution. He explained if someone was convicted of a heinous crime, he or she would not come to Montana and acknowledge true identity. Furthermore, these criminals would know which states did not use fingerprinting.

SEN. SPRAGUE said he agreed 110%, because if a person wanted to change location, the identity would also be changed. One thing, however, that could not change would be the fingerprints.

SEN. TOEWS expressed support for the amendments, explaining he was afraid once something like this got started, it would get worse and worse. Or, if fingerprinting was in, it should be required of everyone, including old people, volunteers, etc.

SEN. STANG remarked allowing the fingerprinting would set up a mechanism to reimburse the state for the effort of sending in the fingerprints. If this bill did not pass, the Federal Government would eventually ask for fingerprinting, Montana would not have the mechanism to do it, and the process would be delayed. He

submitted it was important to know that people who were working with children were not child molesters in other states. This bill gave a greater chance to "weed" these people out, because the folks involved with our children should be people who could be trusted.

SEN. SPRAGUE commented banks already required fingerprints to cash checks. He had three grandchildren, and if one slipped by the system, it was not worth it.

SEN. TOEWS argued there were risks in a free society and he was not willing to give that up, in order to have a perfect, safe and protected society. Freedom and risk went hand-in-hand.

SEN. ELLIS was of the opinion children were very vulnerable and trusting of the adults who worked with them. He did not support fingerprinting present employees, but felt it was appropriate to do so with new employees or volunteers.

{Tape : 2; Side : A; Approx. Time Counter : 29.6}

SEN. JOHN HERTEL asked the meaning of name-based criminal. **Lance Melton** said it was name, date of birth and social security number.

Motion/Vote: **SEN. STANG** moved that **HB 590 BE CONCURRED IN**.
Motion failed 5-6 on Roll Call Vote #3.

Motion/Vote: **SEN. STANG** moved previous motion **BE RECONSIDERED**.
Motion carried 10-1 with SEN. GLASER voting no.

Motion/Vote: **SEN. STANG** moved that **AMENDMENTS HB05900.AEM BE CONCURRED IN**. **Motion carried 9-2 with SEN. GLASER and SEN. WELLS voting no.**

Discussion:

SEN. SPRAGUE asked for clarification now the bill did not require fingerprinting, but background checks, and the collectable dollar amount was less. He was affirmed. He asked if background checks were currently being done on new teachers and was told it was up to the school district. **SEN. TOEWS** said he understood the certification process involved a background check on certified people.

SEN. BILL GLASER maintained it was not enough to fingerprint just those people coming into the state, because Montana already had some school personnel who were offenders. It was his opinion **HB 590** was worthless.

Motion/Vote: SEN. STANG moved that HB 590 BE CONCURRED IN AS AMENDED. Motion carried 7-4 on Roll Call Vote #4.

{Tape : 2; Side : A; Approx. Time Counter : 40.1}

EXECUTIVE ACTION ON HB 103

Discussion:

Madalyn Quinlan, OPI, said everything in HB 103 had been addressed in one way or another by the Committee in HB 71 or SB 460. She was not sure if they would want to keep the bill alive so it could be used as a vehicle.

SEN. GLASER suggested the bill could be tabled today, and if it was needed in the future, it could come off the table.

{Tape : 2; Side : B; Approx. Time Counter : 0}

Motion/Vote: SEN. GLASER moved that HB 103 BE TABLED. Motion carried unanimously 11-0.

ADJOURNMENT

Adjournment: 5:20 P.M.

SEN. DARYL TOEWS, Chairman

JANICE SOFT, Secretary

DT/JS

EXHIBIT (eds66aad)